

1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 Washington, D.C.
4

5 PRIVATE NATIONAL MORTGAGE
6 ACCEPTANCE COMPANY, LLC
7 ("PENNYMAC")

CASE 20-CA-170020

8 and

9 RICHARD SMIGELSKI, an Individual
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14 **ANSWERING BRIEF OF RESPONDENT PRIVATE NATIONAL MORTGAGE**
15 **ACCEPTANCE COMPANY, LLC TO COUNSEL FOR THE GENERAL COUNSEL'S**
16 **CROSS-EXCEPTIONS**
17
18

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Respondent Private National Mortgage Acceptance Company, LLC (“Respondent”) files this Answering Brief to Counsel for the General Counsel’s Cross-Exceptions to the Administrative Law Judge’s Decision.

DISCUSSION AND ARGUMENT

A. The ALJ’s Omissions Were Not “Inadvertent Errors.”

Counsel for the General Counsel finds fault with Administrative Law Judge Raymond Green’s (“ALJ”) purported “inadvertent” errors in his conclusions of law (Cross-Exception No. 1), remedies (Cross-Exception No. 2), recommended order (Cross-Exceptions No. 3 and 4), and notice (Cross-Exception No. 5). The General Counsel’s Cross-Exceptions are directed to the ALJ’s purported finding that Respondent’s Mutual Arbitration Policy (“MAP”) precluded employees from filing charges with the National Labor Relations Board. While the General Counsel attributes the omissions as “inadvertent errors” of the ALJ, there is nothing in the record to establish the General Counsel’s characterization of these omissions. Based on a search of Board decisions, the ALJ is an experienced judge, and has been an NLRB administrative law judge since at least 1997. See A.P.R.A. Fuel Oil Buyers Group, Inc., 324 NLRB 630 (1997). Given the ALJ’s experience, it is apparent that the ALJ’s omissions were not inadvertent. The General Counsel’s Cross-Exceptions should therefore be rejected.

B. The General Counsel’s Cross-Exceptions Should Be Rejected Because Respondent Did Not Violate Section 8(a)(1) Since The MAP Does Not Interfere With Employees’ Rights To File Charges.

The General Counsel’s Cross-Exceptions should also be rejected because the MAP does not interfere with employees’ rights to file charges with the NLRB. As set forth more fully in Respondent’s Brief in Support of Exceptions and Respondent’s Reply Brief to Answer to Exceptions, employees could not reasonably conclude that Respondent’s MAP prohibits the filing of charges when the MAP expressly states the opposite. See Respondent’s Brief in Support of Exceptions, at pp. 23-26; Reply Brief, at pp. 6-9. Indeed, it is undisputed that the MAP clearly informs employees of their right to file charges with the NLRB notwithstanding their agreement to arbitrate claims. In this regard, the MAP “*expressly excludes from its mandatory arbitration*

1 *provisions any claims that could be made to the National Labor Relations Board.”* [Joint Mot. p.
2 6, ¶4 (emphasis added).] Because the ALJ erred in “finding” to the contrary, the General
3 Counsel’s Cross-Exceptions should be rejected.

4 C. **The General Counsel’s Cross-Exceptions Should Be Rejected Because The**
5 **Section 8(a)(1) Finding Underlying The General Counsel’s Cross-Exceptions**
6 **Violates Respondent’s Due Process Rights.**

7 The General Counsel’s Cross-Exceptions should be rejected because the purported
8 Section 8(a)(1) “finding” underlying the General Counsel’s Cross-Exceptions violates
9 Respondent’s due process rights. As set forth more fully in Respondent’s Brief in Support of
10 Exceptions and Respondent’s Reply Brief to Answer to Exceptions, a Section 8(a)(1) violation
11 based on a purported “finding” by the ALJ that employees could reasonably conclude that
12 Respondent’s MAP prohibits the filing of charges violates Respondent’s due process rights. See
13 Respondent’s Brief in Support of Exceptions, at pp. 2, 23-24; Reply Brief, at pp. 5-6.

14 Here, the General Counsel amended the complaint after the parties had agreed to a
15 stipulated record. In doing so, the General Counsel’s amendment to the complaint did not
16 identify any specific provisions in the MAP that could be reasonably read to restrict employees’
17 rights to file charges with the NLRB. Compounding the General Counsel’s failure, the ALJ also
18 did not identify any language in the MAP that supported the General Counsel’s amendment and
19 any Section 8(a)(1) finding. Instead, the ALJ simply concluded that “...in the light of the manner
20 in which the MAP provisions are broadly drafted, I conclude that employees would have a
21 reasonable basis for concluding that they would be precluded from filing charges with the
22 [NLRB].” [ALJD, p. 4, lines 23-25.] The ALJ provided no analysis as to why he reached this
23 conclusion.


24 The General Counsel’s Cross-Exceptions should therefore be rejected because correcting
25 the ALJ’s “inadvertent” errors as requested by the General Counsel would be based on a Section
26 8(a)(1) “finding” that violates Respondent’s due process rights.

CONCLUSION

Based on the foregoing, Respondent Private National Mortgage Acceptance Company, LLC respectfully requests that the Board reject Counsel for the General Counsel's Cross-Exceptions to the ALJ's Decision.

DATED: April 7, 2017

HILL, FARRER & BURRILL LLP

By: 

RICHARD S. ZUNIGA
Attorneys for Respondent
PRIVATE NATIONAL MORTGAGE
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CERTIFICATE OF SERVICE

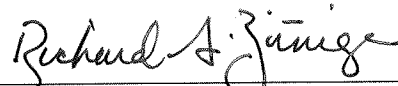
I hereby certify that on April 7, 2017, I caused the foregoing document described as
**ANSWERING BRIEF OF RESPONDENT PRIVATE NATIONAL MORTGAGE
ACCEPTANCE, LLC TO COUNSEL FOR THE GENERAL COUNSEL'S CROSS-
EXCEPTIONS** in Case 20-CA-170020 to be filed via E-Filing.

I hereby also certify that on April 7, 2017, I caused the foregoing document to be served
by electronically mailing a true copy thereof and by regular U.S. Mail by placing a true copy
thereof in a sealed envelope with postage thereon fully pre-paid and addressed as follows:

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